THE HON'BLE SRI JUSTICE A.GOPAL REDDY

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WRIT PETITION No.9955 of 1994

DATED: 28-02-2006

Between:

M/s.Sri Krishna Engineering Co. & another . . .Petitioners

And

The MRO, Kovvur, and another . . .Respondents

THE HON'BLE SRI JUSTICE A.GOPAL REDDY

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WRIT PETITION No.9955 of 1994

O R D E R:

This writ petition is filed by the petitioner-company to declare the notice, dated 10-05-1994, issued by the 1st respondent-Mandal Revenue Officer, Kovvur, as arbitrary, illegal, violative of the principles of natural justice and the rights guaranteed under Articles 14 and 300-A of the Constitution of India.

Through the impugned notice, the petitioner-company was called upon to deposit an amount of Rs.38,60,734/- and failure to which, further action would be taken for attaching its movable and immovable properties.

The impugned notice was issued under the following circumstances.

The 1st petitioner is a Class-I contractor and tendered for the work of construction of skew bridge across Navigation Canal near Vijjeswaram. As it could not show good progress of work because of an unprecedented cyclone, the 2nd respondent extended the time for completion of work till 31-07-1991. So also, it has not shown the required progress in work and therefore, the 2nd respondent terminated its contract through a letter, dated 04-02-1991, and took over possession of the site.

Questioning the said termination of the contract, the petitioner-company filed O.S.No.30 of 1991 before the learned Subordinate Judge, Rajahmundry, under Section 20 of the Arbitration Act for appointment of an Arbitrator to resolve the

dispute. Pending the suit, it sought for an injunction restraining the authorities from terminating the contract and also for encashing the bank guarantee. The learned Judge dismissed the petition as well as the suit on 24-02-1993 holding that the suit under Section 20 of the Arbitration Act is not maintainable in the light of the terms and conditions of the agreement and that since the dispute involved in the claim is beyond Rs.50,000/-, the same has to be adjudicated by a civil Court of competent jurisdiction.

The department filed a counter affidavit stating that on termination of the contract of the petitioner-company, the 2nd respondent by a notice, dated 04-02-1991, with a date of receipt and opening of tenders as 22-03-1991, called for tenders for the work left over by the petitioner-company including dismantling and reconstruction of tilted pier well. The date of receipt of tenders was postponed several times and finally, the tenders were opened on 08-07-1991. As only one tender was received, the same was submitted to the Chief Engineer, Major Irrigation, G.D.S. Unit, Hyderabad, for scrutiny and to get approval from the Commissionerate of Tenders, Hyderabad, as per rules. Meanwhile, the said tenderer passed away and therefore, the tender was cancelled. As per Government Memo.No.152/GV1/78-7, dated
27-10-1978, under clause 61 of P.S. to A.P.S.S., the balance work should be resumed within six months. In view of urgency, a part quantity of earthwork for formation of left side embankment to a value of Rs.20,000/- was entrusted to a contractor. Again, fresh tenders were called for by the 2nd respondent through a notice, dated 03-08-1991, and entrusted the work to the II Agency by handing over the site to it on 10-04-1992. The said II Agency completed the work to the extent of 83.47%.

The total value of the work executed by the petitioner-company from 01-02-1990 to 07-05-1990 is 0.85% and in all, it completed the work only 15.48%. In spite of repeated notices, there is no progress and therefore, the 2nd respondent terminated the contract of the petitioner-company and entrusted the balance work to the II Agency. The petitioner-company was served with a notice by the Executive Engineer vide his letter, dated 23-03-1992, duly requesting it to be present at the work site on 31-03-1992 to furnish its acceptance for the levels and other measurements recorded by the department. But the petitioner-company failed to turn up to attend the work site before handing over the same to the II agency.

The loss suffered by the department to a tune of Rs.38,60,734/- was worked out based on the difference in rates quoted by the petitioner-company and the II agency, including dismantling and reconstruction of tilted pier well as per Clause 61 of P.S. to A.P.S.S., and the same was proposed to be recovered from the petitioner-company. As per clause 61 of P.S. to A.P.S.S., the extra cost involved to complete the work due to default of the petitioner-company is to be borne by it only. The petitioner-company was already informed through a notice, dated 04-02-1991, that the excess amount including all incidental charges, which may be incurred to complete the work would be recovered from it.

The matter was brought to the notice of all the Superintending Engineers of the Department with a request to recover a sum of Rs.38,60,734/- worked out as the difference of amount to be recovered from the petitioner-company, if it is executing any work within their jurisdiction concerned. As the petitioner-company is not executing any other work, the matter was referred to the District Collector, West Godavari, with a request to initiate action against the petitioner-company to collect the said amount. Accordingly, the District Collector directed the 1st respondent to take necessary action against it for recovery of the amount.

Heard the learned counsel for the petitioners and also the learned Government Pleader for Irrigation.

The Superintending Engineer, Dowleshwaram, addressed a letter, dated 12-04-1994, to the District Collector, West Godavari, with a request to collect the amount from the petitioner-company. On receipt of such letter, the District Collector called upon the 1st respondent to take steps for recovery of the amount from the petitioner-company. Thus, the 1st respondent issued the impugned notice.

The petitioner-company questioned the impugned consequential notice issued by the 1st respondent instead of questioning the letter, dated 12-04-1994, addressed by the Superintending Engineer to the District Collector specifying the amount and recovery of the same.

Once the department, with whom the petitioner-company entered into an agreement, determined the liability and requested the District Collector to initiate action for recovery of the amount from the petitioner-company, the petitioner-

company cannot question the impugned consequential notice issued by the 1st respondent, who only executes the instructions issued by the District Collector, for recovery of the amount.

In view of the same, the writ petition fails and is accordingly, dismissed. No order as to costs.

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(A.GOPAL REDDY, J)

28th FEBRUARY, 2006.

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